The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§50.115, 50.119, and 50.143.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking is proposed to implement Senate Bills (SB) 709 and 1267, both adopted by the 84th Texas Legislature (2015) with an effective date of September 1, 2015. Concurrently with this proposal, and published in this issue of the *Texas Register*, the commission is proposing amendments to 30 Texas Administrative Code (TAC) Chapter 1, Purpose of Rules, General Provisions; Chapter 39, Public Notice; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 70, Enforcement; and Chapter 80, Contested Case Hearings. SB 709 is implemented by rules proposed in Chapters 39, 50, 55, and 80. SB 1267, Sections 4, 6, 7, and 9 are implemented by rules proposed in Chapters 1, 50, 55, 70, and 80.

SB 709

SB 709 makes several changes to the current contested case hearing (CCH) process for applications for air quality; water quality; municipal, industrial and hazardous waste; and underground injection control permits. Most of the changes apply to applications filed and judicial proceedings regarding a permit initiated on or after September 1, 2015. The specific changes to the CCH process are discussed further.

First, members of the public or interested groups or associations must make timely comments on the application to be considered as an affected person, thus removing the ability for hearing requestors to adopt comments made by others as their own issues for a CCH. A group or association seeking to be considered as an affected person must specifically identify, by name and physical address in its timely hearing request, a member who would be an affected person in the person's own right.

Second, the executive director must notify the state senator and state representative for the area in which the facility is located or is proposed to be located at least 30 days prior to issuance of a draft permit. SB 709 also requires TCEQ to provide sufficient notice to applicants and others involved in permit proceedings that the changes in the law from SB 709 apply to all applications filed on or after September 1, 2015; this is required until the TCEQ adopts the rules implementing SB 709.

Third, SB 709 identifies specific information that the commission may consider when determining if hearing requestors are affected persons. SB 709 also prohibits the commission from finding a group or association is affected unless their CCH request has timely and specifically identified, by name and physical address, a member who would be affected in the member's own right. The issues submitted by the commission to the State Office of Administrative Hearings (SOAH) for the CCH must be detailed and complete and contain only factual issues or mixed questions of fact and law.

Fourth, when the commission files the application, draft permit and preliminary decision, and other documentation with SOAH as the administrative record, the record establishes a prima facie demonstration that the draft permit meets all state and federal legal and technical requirements, and, the permit, if issued, would protect human health and safety, the environment, and physical property. The prima facie case may be rebutted by presentation of evidence that demonstrates that at least part of the draft permit violates a specifically applicable state or federal requirement. If there is such a rebuttal, the applicant and the executive director may present additional evidence to support the draft permit.

Fifth, the executive director's role as a party in a CCH is to complete the administrative record and support his position developed in the draft permit; however, SB 709 provides that his position can be changed if he has revised or reversed his position on the draft permit that is part of the CCH administrative record; this change is applicable to all permit application hearings, not only the types of applications named above.

Finally, SB 709 limits the time for the issuance of the administrative law judge's (ALJ's) proposal for decision in a CCH to no longer than 180 days from the date of the preliminary hearing or by an earlier date specified by the commission. SB 709 allows for extensions beyond 180 days based upon agreement of the parties with the ALJ's

approval, or by the ALJ for issues related to a party's deprivation of due process or another constitutional right. For directly referred applications, the preliminary hearing may not be held until the executive director has issued his response to public comments.

SB 1267

SB 1267 amends the Texas Administrative Procedure Act (APA), codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of CCHs and agency decisions, signature and timeliness of agency decisions, presumption of the date that notice of an agency decision is received, motions for rehearing regarding agency decisions, and the procedures for judicial review of agency decisions.

The changes to the APA for which TCEQ rulemaking is necessary are as follows. First, SB 1267 removes the presumption that notice is received on the third day after mailing. Second, SB 1267 creates a process through which a party that alleges that notice of the commission's decision or order was not received can seek to alter the timelines for filing a motion for rehearing. Third, the time period for filing a motion for rehearing will now begin on the date that the commission's decision or order is signed, unless the beginning date is altered for a party that does not receive notice of the commission's decision or order, until at least 15 days after the commission's decision or order is signed, but no later than 90 days after the commission's decision or order is signed.

Finally, SB 1267 provides that adversely affected parties have certain opportunities to file a motion for rehearing in response to a commission decision or order that modifies, corrects, or reforms a commission decision or order in response to a previously issued motion for rehearing.

Section by Section Discussion

In addition to the amendments associated with this rulemaking, the proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally not specifically discussed in this preamble.

§50.115, Scope of Contested Case Hearings

The amendment to §50.115(c)(2) is proposed to implement new Texas Government Code, §2003.047(e-1) in SB 709, Section 1. The amendment would provide that the commission may not refer an issue to SOAH for a CCH unless the commission determines that, for applications filed on or after September 1, 2015, the issue involves disputed question of fact or a mixed question of law and fact that was timely raised in public comment made by the affected person.

The amendment to §50.115(d) is proposed to implement new Texas Government Code, §2003.047(e-2) and (e-3) in SB 709, Section 1 and Section 5(a)(1). Subsection (d)(1) is proposed to add the date applicability for applications filed before September 1, 2015, to the existing rule. Subsection (d)(2) is proposed to provide that, for applications received by the commission on or after September 1, 2015, the maximum length of the hearing is proposed to be 180 days (reduced from the current maximum length of one year) from the first day of the preliminary hearing to the date the proposal for decision is issued, unless the commission specifies a shorter duration, or the hearing is extended by the judge. The amendment would also provide that a judge may extend any hearing if the judge determines that failure to grant an extension will unduly deprive a party of due process or another constitutional right, or by agreement of the parties with approval of the judge.

§50.119, Notice of Commission Action, Motion for Rehearing

The amendment to §50.119 is proposed to implement changes to the APA in Texas Government Code, §2001.146(a), as amended in SB 1267, Section 9**.** The commission proposes to amend subsection (b) to change the deadlines for filing a motion for rehearing from within 20 to not later than 25 days after the date of the commission's final decision or order on the application is signed, unless the time for filing the motion for rehearing has been extended under the APA. The amendment would also remove text regarding the presumption of notice.

The amendment to §50.119 is also proposed to implement changes to the APA in Texas Government Code, §2001.146(g), as amended in SB 1267, Section 9. Proposed subsection (d) would provide that a motion for rehearing must identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. The motion must also state the legal and factual basis for the claimed error.

§50.143, Withdrawing the Application

The existing rule text is proposed to be designated as subsection (a). Subsection (b) is proposed to implement SB 709, Section 5(a)(1) and (b). Applications filed before September 1, 2015, for which the chief clerk mailed the executive director's preliminary decision and notice of a draft permit that are withdrawn by the applicant on or after September 1, 2015, are governed by the commission's rules as they existed immediately before September 1, 2015, and those rules are continued in effect for that purpose if the application is refiled with the commission, and the executive director determines the refiled with application is substantially similar. The information that the executive director may consider in making a determination of a substantially similar application is listed in subsection (b)(1) - (7).

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government. The proposed rules are procedural in nature and do not directly impact the cost of CCHs. The proposed rules would implement SBs 79 and 1267, both adopted by the 84th Texas Legislature (2015).

SB 709

SB 709 was passed by the 84th Texas Legislature (2015) with an effective date of September 1, 2015. SB 709 makes several changes to the current CCH process for applications for air quality; water quality; municipal, industrial and hazardous waste; and underground injection control permits. Most of the changes apply to applications filed and judicial proceedings regarding a permit initiated on or after September 1, 2015. The specific changes to the CCH process are discussed further.

First, members of the public or interested groups or associations must make timely comments on the application to be considered as an affected person, thus removing the ability for hearing requestors to adopt comments made by others as their own issues for a hearing. A group or association seeking to be considered as an affected person must specifically identify in its comments a member who would be an affected person in the

person's own right.

Second, the executive director must notify the state senator and state representative for the area in which the facility is located or is proposed to be located at least 30 days prior to issuance of a draft permit. SB 709 also requires TCEQ to provide sufficient notice to applicants and others involved in permit proceedings that the changes in the law from SB 709 apply to all applications received on or after September 1, 2015; this is required until the TCEQ adopts the rules implementing SB 709.

Third, SB 709 identifies specific information that the commission may consider when determining if hearing requestors are affected persons. SB 709 also prohibits the commission from finding a group or association is affected unless their comments have timely and specifically identified a member who would be affected in the member's own right. The issues submitted by the commission to the SOAH for the CCH must be detailed and complete and contain only factual issues or mixed questions of fact and law.

Fourth, when the commission files the application, draft permit and preliminary decision, and other documentation with SOAH as the administrative record, the record establishes a prima facie demonstration that the draft permit meets all state and federal legal and technical requirements, and, the permit, if issued, would protect human health

and safety, the environment and physical property. The prima facie case may be rebutted by presentation of evidence that demonstrates that at least part of the draft permit violates a specifically applicable state or federal requirement. If there is such a rebuttal, the applicant and the executive director may present additional evidence to support the draft permit.

Fifth, the executive director's role as a party in a CCH is to complete the administrative record and support his position developed in the draft permit; however, SB 709 provides that his position can be changed if he has revised or reversed his position on the draft permit that is part of the CCH administrative record; this change is applicable to all permit application hearings, not only the types of applications named above.

Finally, SB 709 limits the time for the issuance of the ALJ's proposal for decision in a CCH to no longer than 180 days from the date of the preliminary hearing or by the date specified by the commission. SB 709 allows for continuances based upon agreement of the parties with ALJ approval, or by the ALJ for issues related to a party's deprivation of due process or another constitutional right. For directly referred applications, the preliminary hearing may not be held until the executive director has issued his response to public comments.

SB 1267

SB 1267, also passed by the 84th Texas Legislature in 2015, amends the APA, codified in Texas Government Code, Chapter 2001, which is applicable to all state agencies. SB 1267 revises and creates numerous requirements related to notice of CCH and agency decisions, signature and timeliness of agency decisions, presumption of the date notice that an agency decision is received, motions for rehearing of agency decisions, and the procedures for judicial review of agency decisions. Rulemaking is needed to implement SB 1267, Sections 4, 6, 7, and 9.

The changes to the APA for which TCEQ rulemaking is necessary are as follows. First, the presumption that notice is received on the third day after mailing is removed. Second, SB 1267 creates a process through which a party that alleges that notice of the commission's decision was not received can seek to alter the timelines for filing a motion for rehearing. Third, the date from which the time period for filing a motion for rehearing will now begin on the date the order is signed, unless altered for a party that does not receive notice of the commission's order until at least 15 days after the commission's decision or order is signed but no later than 90 days after the commission's decision or order is signed. Finally, SB 1267 provides that adversely affected parties have certain opportunities to file a motion for rehearing in response to a commission order that modifies, corrects, or reforms a commission order in response to a previously issued motion for rehearing.

The proposed rules are procedural in nature and do not directly impact the cost of CCHs. There may be a savings in the cost of hearings for applicants due to the new statutory provision that provides that the application and executive director's draft permit establish a prima facie case that the draft permit meets the applicable legal requirements, but the amount cannot be estimated due to the variability in complexity of applications and the number of contested issues. Local governments that are permit applicants and are subject to CCH requests will be required to furnish a copy of their application to the agency if the application is subject to a CCH. There may be additional costs to them to furnish a copy of their application, though these costs are not expected to be significant.

The number of units of local governments is a small percentage of the number of applicants for and who comment on air quality; water quality; municipal, industrial and hazardous waste; and underground injection control permit applications. While it is possible that a unit of state government can be a permit applicant, it is rare. If one is, it would be affected in the same way as other governmental entities who are applicants. State agencies are generally prohibited from contesting TCEQ permit applications, so they would not be affected the same as other governmental entities who protest applications and participate in CCHs.

There are fiscal implications for the agency due to the need to revise the Commissioners'

Integrated Database to adequately implement SB 709. However, costs to upgrade the database are not expected to be significant and would be absorbed using current resources.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rulemaking is in effect, the public benefit anticipated from the changes seen in the proposed rules would be compliance with state law and greater clarity for the public and also for applicants for certain air quality; water quality; municipal, industrial and hazardous waste; and underground injection control permit applications that are subject to the opportunity for public comment and requests for a CCH on those applications.

No significant fiscal implications are anticipated for businesses or individuals as a result of the implementation of the proposed rules.

The proposed rules are procedural in nature and do not directly impact the cost of CCHs. There may be a savings in the cost of hearings for applicants due to the new statutory provision that provides that the application and executive director's draft permit establish a prima facie case that the draft permit meets the applicable legal requirements, but the amount cannot be estimated due to the variability in complexity

of applications and the number of contested issues. Businesses that are permit applicants and are subject to CCH requests will be required to furnish a copy of their application to the agency if the application is subject to a CCH. There may be additional costs to them to furnish a copy of their application, though these costs are not expected to be significant.

The rules will apply to applicants for certain air quality; water quality; municipal, industrial and hazardous waste; and underground injection control permit applications that are subject to the opportunity for public comment and requests for a CCH on those applications. The number of applicants who are subject to CCH requests has historically been a small number, on the order of approximately 1%.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. The proposed rules would have the same effect on a small business as it does on a large business. The proposed amendments are procedural in nature and do not directly impact the cost of CCHs. It is not known how many applicants would be small or micro-businesses, but for those that are, there may be a savings in the cost of hearings for applicants due to the new statutory provision that provides that the application and executive director's draft permit establish a prima facie case that the draft permit meets the applicable legal requirements, but the amount

cannot be estimated due to the variability in complexity of applications and the number of contested issues. Businesses that are permit applicants and are subject to CCH requests will be required to furnish a copy of their application to the agency if the application is subject to a CCH. There may be additional costs to them to furnish a copy of their application, though these costs are not expected to be significant.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rulemaking is necessary to comply with state law and does not adversely affect a small or micro-businesses in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is

not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments to Chapter 50 are procedural in nature and are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, they implement requirements for CCHs and for motions for rehearing of commission action, ensuring that the rules are consistent with the APA and the requirements of SB 709 and SB 1267.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general authority of the commission. The proposed amendments to Chapter

50 do not exceed an express requirement of state law or a requirement of a delegation agreement, and were not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments to Chapter 50 are procedural in nature and implement requirements for CCHs and for motions for rehearing of commission action, ensuring that the rules are consistent with the APA and the requirements of SB 709 and SB 1267. The change in procedure will not burden private real property. The proposed amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under

Texas Government Code, §2007.002(5). The proposed amendments do not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the amendments affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed amendments are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on September 15, 2015, at 2:00 in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called

upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Sherry Davis, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-018-080-LS. The comment period closes on September 21, 2015. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Janis Hudson, Environmental Law Division, at (512) 239-0466.

SUBCHAPTER F: ACTION BY THE COMMISSION
§50.115, §50.119

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation; Texas Government Code, §2001.146, which authorizes the procedures for motions for rehearing filed with state agencies; and Texas Government Code, §2003.047, which provides the authority for the State Office of Administrative Hearings to conduct hearings on behalf of the commission.

The proposed amendments implement Texas Government Code, §2001.146 and §2003.047; and Senate Bills 709 and 1267 (84th Texas Legislature, 2015).

§50.115. Scope of Contested Case Hearings.

(a) Subsections (b) - (d) of this section apply to applications under Chapters 26 and 27 of the Texas Water Code and Chapters 361 and 382 of the Texas Health and Safety Code. Subsection (e)(1) of this section applies to all applications under this subchapter. Subsections (e)(2) and (f) of this section apply as stated in the subsection.

(b) When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to State Office of Administrative Hearings (SOAH) [SOAH] for a hearing.

(c) The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

(1) involves a disputed question of fact or a mixed question of law and fact;

(2) was raised during the public comment period, and, for applications filed on or after September 1, 2015, was raised in a comment made by the affected person; and

(3) is relevant and material to the decision on the application.

(d) Consistent with the nature and number of the issues to be considered at the contested case hearing, the commission by order shall specify the maximum expected duration of the hearing by stating the date by which the judge is expected to issue a proposal for decision.

(1) For applications filed before September 1, 2015, no [No] hearing shall be longer than one year from the first day of the preliminary hearing to the date the proposal for decision is issued. A judge may extend any hearing if the judge determines that failure to grant an extension will deprive a party of due process or another constitutional right.

(2) For applications filed on or after September 1, 2015, no hearing shall be longer than 180 days, or a date specified by the commission, from the first day of the preliminary hearing to the date the proposal for decision is issued, unless the hearing is extended by the judge. A judge may extend any hearing if the judge determines that failure to grant an extension will unduly deprive a party of due process or another constitutional right, or by agreement of the parties with approval of the judge.

(e) The commission may limit the scope of a contested case hearing:

(1) to only those portions of a permit for which the applicant requests action through an amendment or modification. All terms, conditions, and provisions of an existing permit remain in full force and effect during the proceedings, and the permittee shall comply with an existing permit until the commission acts on the application; and

(2) to only those requirements in Texas Health and Safety Code, §382.055 [of the Texas Health and Safety Code] for the review of a permit renewal.

(f) When referring a case to SOAH, for applications other than those filed under Texas Water Code, Chapters 26 and 27 [of the Texas Water Code] and Texas Health and Safety Code, Chapters 361 and 382 [of the Texas Health and Safety Code], the commission or executive director shall provide a list of disputed issues. For hearings on these applications, the disputed issues are deemed to be those defined by law governing these applications, unless the commission orders otherwise under §80.6(d) of this title (relating to Referral to SOAH).

§50.119. Notice of Commission Action, Motion for Rehearing.

(a) If the commission acts on an application, the chief clerk shall mail or otherwise transmit the order and notice of the action to the applicant, executive director, public interest counsel, and to other persons who timely filed public comment, or requests for reconsideration or contested case hearing. The notice shall explain the opportunity to file a motion under §80.272 of this title (relating to Motion for Rehearing). If the commission adopts a response to comments that is different from the executive director's response to comments, the chief clerk shall also mail the final response to comments. The chief clerk need not mail notice of commission action to persons submitting public comment or requests for reconsideration or contested case hearing who have not provided a return mailing address. The chief clerk may mail the information to a representative group of persons when a substantial number of public comments have been submitted.

(b) If the commission acts on an application, §80.272 of this title applies. A motion for rehearing must be filed not later than 25 [within 20] days after the date [the person is notified in writing of] the commission's final decision or order on the application is signed, unless the time for filing the motion for rehearing has been extended under Texas Government Code, §2001.142 and §80.276 of this title, by agreement under Texas Government Code, §2001.147, or by the commission's written order issued pursuant to Texas Government Code, §2001.146(e). [A person is presumed to have been notified on the third day after the date that the decision or order is mailed

by first class mail.] If the motion is denied under §80.272 and §80.273 of this title (relating to Motion for Rehearing and Decision Final and Appealable) the commission's decision is final and appealable under Texas Water Code, §5.351 or Texas Health and Safety Code, §§361.321, 382.032, or 401.341.

(c) Motions for rehearing may be filed on:

(1) an issue that was referred to State Office of Administrative Hearings (SOAH) [SOAH] for contested case hearing, or an issue that was added by the judge;

(2) issues that the commission declined to send to SOAH for hearing; and

(3) the commission's decision on an application.

(d) A motion for rehearing must identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. The motion must also state the legal and factual basis for the claimed error.

SUBCHAPTER G: ACTION BY THE EXECUTIVE DIRECTOR

§50.143

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission. Additional relevant sections are Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and Texas Government Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed amendment implements Senate Bill 709 (84th Texas Legislature, 2015).

§50.143. Withdrawing the Application.

(a) Upon a request by the applicant at any time before the application is referred to State Office Of Administrative Hearings (SOAH) [SOAH], the executive director shall

allow the withdrawal of the application and shall file a written acknowledgment of the withdrawal with the chief clerk. If the application has been scheduled for a commission meeting, the chief clerk shall remove it from the commission's agenda. For purposes of this rule, an application is referred to SOAH when the commission votes during a public meeting for referral or when the executive director or the applicant file a request to refer with the chief clerk under §55.210 of this title (relating to Direct Referrals) [§55.209(h) of this title (relating to Processing Requests for Reconsideration and Contested Case Hearing)].

(b) Applications filed before September 1, 2015, for which chief clerk mailed the executive director's preliminary decision and notice of a draft permit under §39.419 of this title (relating to Notice of Application and Preliminary Decision) that are subsequently withdrawn by the applicant on or after September 1, 2015, are governed by the commission's rules as they existed immediately before September 1, 2015, and those rules are continued in effect for that purpose if the application is refiled with the commission and the executive director determines the resubmitted application is substantially similar. For purposes of making this determination, the executive director may consider the following information contained in the withdrawn application and the refiled application:

(1) the name of the applicant;

(2) the location or proposed location of the construction, activity or discharge, to be authorized by the application;

(3) the air contaminants to be emitted;

(4) the area to be served by a wastewater treatment facility;

(5) the volume and nature of the wastewater to be treated by a wastewater treatment facility;

(6) the volume and type of waste to be disposed; or

(7) any other factor the executive director determines is relevant to this determination.